

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

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:  
ROBERT J. HARRINGTON, FAYE BYRON,  
CRAIG BUCK, VALERIE L. PAWSON,  
RAY DRASNIN, WANDA MILLS, JEFF  
GOLUMBUK, CAROLINE MARSHALL-  
SMITH, ANESIA KALAITZIDIS,  
KENNETH IVANOVITZ, ATHANASE  
KARAGIORGOS, HARRIET ZALWANGO.  
MICHAEL BLAU, KENNETH MICCICHE  
and JENNIEE TSOUVRAKAS, on behalf of  
themselves and others,

Plaintiffs,

- against -

DELTA AIRLINES, INC., AMERICAN  
AIRLINES, US AIRWAYS GROUP, INC.,  
d/b/a US AIRWAYS, NORTHWEST  
AIRLINES, UNITED AIRLINES, INC.,  
ALASKA AIRLINES, CONTINENTAL  
AIRLINES, AIR CANADA, OLYMPIC  
AIRLINES CORPORATION LIMITED,  
CHINA SOUTHERN AIRLINES COMPANY  
LIMITED, DEUTSCHE LUFTHANSA, A.G.,  
d/b/a LUFTHANSA AIRLINES, SWISS  
INTERNATIONAL AIRLINES LTD., d/b/a  
SWISSAIR, BRITISH AIRWAYS, PLC, d/b/a  
BRITISH AIRWAYS, MIDWAY AIRLINES  
CORP., d/b/a MIDWAY AIRLINES,  
ALITALIA-LINEE AEREE ITALIANE S.p.A.,  
d/b/a ALITALIA AIRLINES, SOUTHWEST  
AIRLINES, CO., d/b/a SOUTHWEST  
AIRLINES, CHINA SOUTHERN AIRWAYS-  
SERVICES, SA, d/b/a CHINA SOUTHERN  
AIRWAYS and AIR TRANSPORT  
ASSOCIATION,

Defendants.  
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: **ANSWER**

Defendant China Southern Airlines Company Limited, by its attorneys Campbell, Campbell & Edwards and Condon & Forsyth LLP, answers plaintiffs' Complaint, Jury Claim and Request for Class Certification ("Complaint") as follows:

**AS TO INTRODUCTION AND OVERVIEW OF ACTION**

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint to the extent they are directed at parties other than CHINA SOUTHERN. CHINA SOUTHERN specifically denies the allegations in paragraph 1 of the Complaint to the extent they are directed toward CHINA SOUTHERN or can be construed to assert a claim against CHINA SOUTHERN, and leaves all questions of law for the Court.

**AS TO PARTIES AND FACTS**

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the Complaint except admits that plaintiff Jeff Golumbuk purchased an airline ticket for travel on CHINA SOUTHERN, that CHINA SOUTHERN is a foreign corporation organized and existing under the laws of China with its executive offices located at Baiyun International Airport, Guang Zhuu, Guandong 510405, China, and leaves all questions of law for the Court.

**AS TO CLASS ACTION ALLEGATIONS**

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 34, 38, and 41 of the Complaint, and leaves all questions of law for the Court.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 35, 36, 37, 39, 40, 42 and 43 of the Complaint to the extent they are

directed at parties other than CHINA SOUTHERN. CHINA SOUTHERN specifically denies the allegations in paragraphs 35, 36, 37, 39, 40, 42 and 43 of the Complaint to the extent they are directed toward CHINA SOUTHERN or can be construed to assert a claim against CHINA SOUTHERN, and leaves all questions of law for the Court.

#### **AS TO COUNT I**

5. In response to the introductory paragraph of Count I of the Complaint, CHINA SOUTHERN repeats, reiterates and realleges each and every response contained in paragraphs 1 through 4 of this Answer with the same force and effect as if set forth fully and at length herein.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Complaint to the extent they are directed at parties other than CHINA SOUTHERN. CHINA SOUTHERN specifically denies the allegations in paragraph 44 of the Complaint to the extent they are directed toward CHINA SOUTHERN or can be construed to assert a claim against CHINA SOUTHERN, and leaves all questions of law for the Court.

#### **AS TO COUNT II**

7. In response to the introductory paragraph of Count II of the Complaint, CHINA SOUTHERN repeats, reiterates and realleges each and every response contained in paragraphs 1 through 6 of this Answer with the same force and effect as if set forth fully and at length herein.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 45 and 46 of the Complaint to the extent they are directed at parties other than CHINA SOUTHERN. CHINA SOUTHERN specifically denies the allegations in paragraphs 45 and 46 of the Complaint to the extent they are directed toward CHINA SOUTHERN or can be construed to assert a claim against CHINA SOUTHERN, and leaves all questions of law for the Court.

**AS TO COUNT III**

9. In response to the introductory paragraph of Count III of the Complaint, CHINA SOUTHERN repeats, reiterates and realleges each and every response contained in paragraphs 1 through 8 of this Answer with the same force and effect as if set forth fully and at length herein.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 47, 48, 49, 50 and 51 of the Complaint to the extent they are directed at parties other than CHINA SOUTHERN. CHINA SOUTHERN specifically denies the allegations in paragraphs 47, 48, 49, 50 and 51 of the Complaint to the extent they are directed toward CHINA SOUTHERN or can be construed to assert a claim against CHINA SOUTHERN, and leaves all questions of law for the Court.

**AS TO COUNT IV**

11. In response to the introductory paragraph of Count IV of the Complaint, CHINA SOUTHERN repeats, reiterates and realleges each and every response contained in paragraphs 1 through 10 of this Answer with the same force and effect as if set forth fully and at length herein.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 of the Complaint to the extent they are directed at parties other than CHINA SOUTHERN. CHINA SOUTHERN specifically denies the allegations in paragraph 52 of the Complaint to the extent they are directed toward CHINA SOUTHERN or can be construed to assert a claim against CHINA SOUTHERN, and leaves all questions of law for the Court.

**AS TO COUNT V**

13. In response to the introductory paragraph of Count V of the Complaint, CHINA SOUTHERN repeats, reiterates and realleges each and every response contained in paragraphs 1 through 12 of this Answer with the same force and effect as if set forth fully and at length herein.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 53 and 54 of the Complaint to the extent they are directed at parties other than CHINA SOUTHERN. CHINA SOUTHERN specifically denies the allegations in paragraphs 53 and 54 of the Complaint to the extent they are directed toward CHINA SOUTHERN or can be construed to assert a claim against CHINA SOUTHERN, and leaves all questions of law for the Court.

**AS TO CLASS ACTION STATUS**

15. CHINA SOUTHERN denies the allegations contained in the Complaint that this matter can be certified as a class action jointly against all airline defendants or individually against any airline.

**AS TO JURY CLAIM**

16. CHINA SOUTHERN denies the allegations contained in Complaint demanding a jury trial.

**AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE**

17. The Complaint fails to state a claim against CHINA SOUTHERN upon which relief can be granted.

**AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE**

18. The Class Representative fails to state a claim against CHINA SOUTHERN upon which relief can be granted.

**AS AND FOR A THIRD  
AFFIRMATIVE DEFENSE**

19. CHINA SOUTHERN is a "foreign state" as that term is defined in 28 U.S.C. §

1603 and, therefore, is entitled to all the rights, privileges, protections and defenses afforded by the Foreign Sovereign Immunities Act of 1976, Pub. L. 94-853, 90 Stat. 2891 *codified at* 28 U.S.C. §§ 1330, 1332, 1391 (f), 1441 (d) and 1602-1611.

**AS AND FOR A FOURTH  
AFFIRMATIVE DEFENSE**

20. The Court lacks personal jurisdiction over the person of CHINA SOUTHERN.

**AS AND FOR A FIFTH  
AFFIRMATIVE DEFENSE**

21. The Complaint should be dismissed for improper service of process.

**AS AND FOR A SIXTH  
AFFIRMATIVE DEFENSE**

22. Plaintiffs' state law claims constitute a suit for recovery of a United States federal tax and are barred by 26 U.S.C. § 7422.

**AS AND FOR A SEVENTH  
AFFIRMATIVE DEFENSE**

23. Plaintiffs' claims against CHINA SOUTHERN are preempted by federal law, including the Federal Aviation Act of 1958 as amended (P.L. 5-726, 72 Stat. 731, formerly codified as 49 U.S.C. §1301 *et seq.* now recodified and incorporated into 49 U.S.C. § 40101 *et seq.*), and 49 U.S.C. § 41713.

**AS AND FOR AN EIGHTH  
AFFIRMATIVE DEFENSE**

24. Plaintiffs' are not entitled to the claimed refund as they have failed to comply with the relevant requirements or conditions precedent to obtain the claimed refund.

**AS AND FOR A NINTH  
AFFIRMATIVE DEFENSE**

25. Pursuant to its tariffs and contract of transportation, CHINA SOUTHERN is not

liable to plaintiffs.

**AS AND FOR A TENTH  
AFFIRMATIVE DEFENSE**

26. CHINA SOUTHERN performed all of the terms and conditions of the contract between the parties, if any, which were to be performed by CHINA SOUTHERN, in accordance with such terms and conditions of contract.

**AS AND FOR AN ELEVENTH  
AFFIRMATIVE DEFENSE**

27. Plaintiffs' claims are barred by the relevant statute of limitations set forth by federal and Massachusetts law.

**AS AND FOR AN TWELFTH  
AFFIRMATIVE DEFENSE**

28. No fiduciary relationship exists between CHINA SOUTHERN and plaintiffs.

**AS AND FOR AN THIRTEEN  
AFFIRMATIVE DEFENSE**

29. Plaintiffs' remedy, if any, for the claimed refunds of taxes/fees/charges is not properly against CHINA SOUTHERN but rather is against the governmental or non-governmental entity to whom the taxes/fees/charges were remitted.

**AS AND FOR AN FOURTEENTH  
AFFIRMATIVE DEFENSE**

30. Plaintiffs' class action suit is not permitted under the Federal Rules of Civil Procedure.

WHEREFORE, defendant CHINA SOUTHERN demands judgment dismissing the Complaint in its entirety or, alternatively, judgment limiting their liability pursuant to the foregoing, together with costs and disbursements.

Dated: January 25, 2005

By: /s/ Kathleen M. Guilfoyle  
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